

Monyak, Elizabeth

From: Monyak, Elizabeth
Sent: Friday, January 03, 2020 12:21 PM
To: 'cichter@ichterdavis.com'
Cc: 'Vincent Russo'; Josh Belinfante; Bryan Tyson
Subject: subpoena to Janine Eveler
Attachments: Objections to subpoena.pdf

Hi Cary,

I hope you had a good holiday. Attached are my client's objections to the subpoena that was left at Cobb BOE on 12/23. Please let me know if your client would like to withdraw the subpoena in view of these objections; otherwise, we intend to file a motion to quash the subpoena based on these objections. Thanks, Elizabeth

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

DONNA CURLING, <i>et al.</i> ,)	
)	
Plaintiffs,)	CA No. 1:17-cv-02989-AT
)	
v.)	
)	
BRAD RAFFENSPERGER,)	
)	
Defendants.)	

**OBJECTIONS OF NONPARTY JANINE EVELER, ELECTIONS
SUPERVISOR FOR THE COBB COUNTY BOARD OF ELECTIONS &
REGISTRATION, TO THE SUBPOENA TO PRODUCE DOCUMENTS**

COMES NOW, Non-Party Janine Eveler, Election Supervisor for the Cobb County Board of Elections & Registration (“Director Eveler”) and pursuant to Fed. R. Civ. P. 45(d)(2)(B), hereby objects to the subpoena issued by the Coalition Plaintiffs in the above-captioned litigation for the following reasons:

1. **The subpoena has not been properly served on Director Eveler.** Plaintiffs’ purported service consisted of leaving the subpoena in an envelope with a receptionist on December 23, 2019 when Director Eveler was out of the office on vacation. The receptionist was not authorized to accept service of process on behalf of Janine Eveler.

2. **The time for compliance is unreasonable.** Even if the subpoena had been properly served (which it clearly was not), its request that the documents be produced on the morning of January 10, 2020 is unreasonable. That time frame provides Director Eveler with only 10 business days over the holidays to compile an extensive number of documents from various sources. While ten days is not a reasonable amount of time, Director Eveler would only have *four* business days because she was on vacation when the subpoena was left with the receptionist and will be out of the country beginning on January 6 and will not return until January 10, 2020. Director Eveler would need at least until the end of January to review, redact if necessary, and produce her e-mail communications and would need until the end of February to complete the production. Director Eveler needs to personally undertake most of the work necessary to comply with the subpoena because the majority of responsive e-mails will be in her e-mail account. In addition, as the Director of Cobb BOE, she has the most overall knowledge about where responsive documents might be located. A preliminary e-mail search of only Director Eveler's e-mail revealed 314 e-mails that might be potentially responsive to these requests. These e-mails would all need to be reviewed and possibly redacted to remove confidential information.

3. **The subpoena is burdensome, contains vague terminology, and seeks documents that have nothing to do with Cobb County's pilot election in**

November 2019. Many of the Requests are vague and overbroad. For example, Request No. 1 seeks information concerning communications with “election vendors,” which is an imprecise term. Cobb BOE buys or rents numerous supplies from various sources – everything from writing utensils to seals to paper supplies. However, not all of these supplies are used solely for the election, nor are they specific to the pilot election in November 2019. The terms “audit log” in Requests 9-10 and “Electionware server” in Request No. 10 are unclear. While the prefatory note states that the subpoena “relates to the default backup as ordered in the Court’s August 15, 2019 Order,” many of the requests have nothing to do with the November 2019 pilot election. For example, Requests Nos. 16-17 involve communications between Cobb BOE and the Secretary of State’s Office regarding voter registration lists and provisional ballots, respectively. Request No. 23 involves communications concerning preservation of the old DRE machines.

4. The subpoena seeks documents that do not exist. Request No. 22 seeks documents related to “destruction” of Cobb County election equipment when there has been no destruction, and, therefore, there are no such documents. There are also no documents responsive to Request No. 20, unless that request is intended to refer to the November 2019 pilot election, which does not appear to be the case given that it refers to “elections after January 1, 2020.”

5. The subpoena seeks documents that contain confidential information that may not be disclosed pursuant to Georgia law. Several of the Requests seek information that may not be disclosed pursuant to O.C.G.A. § 21-2-379.24(g) and/or 21-2-500(a). Requests that are wholly objectionable on this basis include: Requests Nos. 5-8, and 18-19. Requests 9-10 may also contain confidential information although it is difficult to determine given the lack of clarity as to what is meant by an “audit log.” Other Requests may be partially objectionable on this ground, such as Requests Nos. 2-3 and 21 insofar as they may contain passwords or voter information, and if so, it may be necessary to redact information from documents that are responsive to those requests.

6. The subpoena seeks documents that are not in Cobb BOE’s or Director Eveler’s possession, custody, or control. *See* Requests Nos. 8-10 (involving Dominion documents).

7. The subpoena seeks documents that can be obtained from parties to the litigation without the necessity of burdening non-parties. *See* Requests Nos. 16-17, 23 (documents that would be in the possession of the Secretary of State).

8. Compliance with the subpoena will result in significant costs to Cobb BOE, and Plaintiffs will, therefore, need to reimburse Cobb BOE for the incurred costs. Director Eveler estimates that it will take 80 hours of her time to locate and review documents responsive to the subpoena, which at her hourly rate

of \$58.50 would result in a cost to Plaintiffs of approximately \$4,686. If certain portions of the work can be delegated to other staff members, the costs will be based on their hourly rate; however, as noted above in Paragraph 2, a large portion of the work can only be done by Director Eveler. This cost projection is, however, an estimate as the exact cost of a document production cannot be known until the work is completed.

Respectfully submitted,

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